

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID ROBINSON

v.

PRISON HEALTH SERVICES, INC. et al

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CIVIL ACTION
NO. 10-7165

ORDER

AND NOW, this 2nd day of June, 2014 upon consideration of the motion to dismiss plaintiff David Robinson's amended complaint (Dkt. No. 48) by defendants Michael Wenerowicz, Joseph Korszniak, Wendy Shaylor and Robert Wolff and plaintiff's response thereto (Dkt. No. 49), and consistent with the accompanying memorandum of law, it is ORDERED that defendants' motion is GRANTED as follows:

- 1) The motion is GRANTED to the extent it seeks dismissal of all federal claims against moving defendants based on the 2003 Hepatitis B injection. These claims are DISMISSED with prejudice;
- 2) The motion is GRANTED to the extent it seeks dismissal of all 14th Amendment claims against the moving defendants based on Robinson's kidney cancer. These claims are DISMISSED with prejudice;
- 3) The motion is GRANTED to the extent it seeks dismissal of all 8th Amendment claims against moving defendants based on their alleged failure to diagnose and treat Robinson's kidney cancer. Robinson may file an amended complaint on or before Monday, June 23, 2014. Robinson is granted leave to amend these claims as follows:
 - a. Plaintiff is granted leave to amend his 8th amendment claims against moving defendants to the extent he can allege facts demonstrating the personal

involvement of the moving defendants in the diagnosis, treatment and care of his kidney cancer;

- b. Plaintiff is denied leave to amend his 8th Amendment claims against moving defendants to the extent he seeks recovery against them in their official capacities.
- 4) The motion is GRANTED to the extent it seeks dismissal of all claims of conspiracy against moving defendants. Robinson may file an amended complaint on or before Monday, June 23, 2014 to the extent he can allege specific actions of defendants committed in creating and furthering the conspiracy;
- 5) The motion is GRANTED to the extent it seeks dismissal of plaintiff's claims pursuant to Title VII. These claims are DISMISSED with prejudice;
- 6) The motion is GRANTED to the extent it seeks dismissal of plaintiff's state law claims against moving defendants Wenerowicz and Shaylor. These claims are DISMISSED with prejudice;
- 7) The motion is GRANTED to the extent it seeks dismissal of plaintiff's state law claims against moving defendants Korszniak and Wolff. Robinson may file an amended complaint on or before Monday, June 23, 2014 to the extent he can allege sufficient facts to satisfy the Twombly pleading requirements as to each element of the prima facie case of Robinson's state law claims.

/s/ Thomas N. O'Neill Jr.
THOMAS N. O'NEILL, JR., J.